

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHRISTOPHER CAMPANELLA

Plaintiffs,

vs-

AURORA LOAN SERVICING

Defendant.

**AFFIRMATION IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR
RECONSIDERATION**

Civil No.: 10 CV 0684

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

Royston Mendonza, Esq., under the penalty of perjury, hereby affirms as follows:

1. I am an associate in the law firm of Steven J. Baum, P.C., counsel for Defendant, Aurora Loan Services, Inc., sued herein as Aurora Loan Servicing, in the above-captioned matter and I am fully familiar with the facts and proceedings of this action. This Affirmation is submitted in opposition to Plaintiff's Motion for Reconsideration.

2. Plaintiff's motion must be denied as the Defendant has responded to Plaintiff's Complaint in a timely manner and in conformity with FRCP 4(d).

3. The Entry of Default against the Defendant entered on July 20, 2010 was done in error. Plaintiff filed an Acknowledgment of Service as FRCP 4(d) states that there is a duty to avoid unnecessary expenses of serving the summons. Defendant received and returned the Acknowledgment of Service, which was entered on July 27, 2010. The clerk correctly reset Defendant's deadline to answer to August 11, 2010.

4. Thereafter, Defendant filed a Motion to Dismiss, in conformity with the FRCP, and said motion is currently pending.

5. Plaintiff then filed a Motion to Strike and Motion for Sanctions on the ground that Defendant's Motion to Dismiss was untimely and nonresponsive. Magistrate Judge David R. Homer entered an Order denying Plaintiff's motions. Said Order was entered on September 2, 2010.

6. Plaintiff then filed a Motion for Reconsideration of Text Order, which is also pending before this Court.

7. In light of the foregoing, Plaintiff's Motion for Reconsideration must be denied as there is no legal or factual basis to support the relief sought and Defendant has timely moved to dismiss and is not in default.

WHEREFORE, it is respectfully submitted that Plaintiff's Motion for Reconsideration be denied in its entirety, and for such other and further relief as this Court deems just and proper.

_____/s/_____
Royston Mendonza, Esq.